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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/654,660	09/05/2000	Stephen R. Carter	6647-17	8081

20575 7590 03/17/2004

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EXAMINER

LEZAK, ARRIENNE M

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 03/17/2004

6

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/654,660

Applicant(s)

CARTER ET AL.

Examiner

Arrienne M. Lezak

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Examiner notes that Independent Claims 1, 7 and 13 have been amended, new Claims 18-20 have been added and no claims have been cancelled. All claims not explicitly addressed herein are found to be addressed within prior Office Action dated 8 December 2003 as reiterated in part herein below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Regarding newly amended Claims 1, 7 and 13, Vaid discloses a computer-implemented method, medium and apparatus for enforcing policy over a computer network, the method comprising: defining a template; assigning a policy to the computer network; monitoring a content stream on the computer network; and enforcing the policy when the content stream is within a threshold distance of the template, (Col. 16, lines 18-63; Fig. 3; and Fig. 8).

4. In considering newly amended Claims 1, 7 and 13, Examiner finds said amended language to be narrowing in nature, as Applicant's original claim language, as interpreted by Examiner at time of examination, enumerates the use of a template generally, which Vaid clearly reads upon. To further narrow the nature of said template is also found to narrow the nature of said claims. That said, regarding newly amended Claims 1, 7 and 13, Applicant asserts that the

template of Vaid is based on the notion of classes and therefore does not read upon the template of the Applicant which is based on the notion of a vector which defines a threshold.

5. After considerable consideration, Examiner finds newly amended Claims 1, 7 and 13 are further rejected under 35 U.S.C. 103(a) as being unpatentable under further consideration of US Patent 6,078,953 to Vaid. Specifically, Examiner finds that bandwidth limits, (col. 16, lines 53-55), as incorporated into the template of Vaid in fact reads upon "templates based on a vector that defines a threshold", as defined by Applicant, (Amendment: p. 7, lines 8-12). Further, the notion of being "greater than" or "less than" reads on a mathematical formula, (Amendment: p. 7, lines 8-12). It would have been obvious to a person having ordinary skill in the art at the time of invention by Applicant to define a template by a set of vectors within a network wherein policies are used to improve quality of service, as noted within Vaid, (Col. 16, lines 50-63). The motivation to combine is suggested by Vaid, which teaches the application of bandwidth-based functions and modifications, alternatives and variations thereof. Thus, newly amended Claims 1, 7 and 13 are also unpatentable under further consideration of Vaid.

6. Regarding Claims 2 and 8, Vaid discloses a computer-implemented method, medium and apparatus wherein assigning a policy includes assigning a policy to limit bandwidth on the computer network for content in the content stream within the threshold distance of the template, (Col. 4, lines 29-32 and Col. 6, lines 39-63). Thus, Claims 2 and 8 remain unpatentable in view of Vaid.

7. Regarding Claims 3 and 9, Vaid discloses a computer-implemented method, medium and apparatus wherein assigning a policy includes assigning a policy to limit access to a document on

the computer network within the threshold distance of the template, (Col. 7, lines 30-50 – incl. Table 2; Col. 8, lines 1-34). Thus, Claims 3 and 9 remain unpatentable in view of Vaid.

8. Regarding Claims 4, 10, 14 and 15 Vaid discloses a computer-implemented method, medium and apparatus wherein monitoring a content stream includes monitoring metadata of the content stream, (Col. 17, lines 8-50; Col. 19, lines 54-55; and Col. 20, lines 1-2). Thus, Claims 4, 10, 14 and 15 remain unpatentable in view of Vaid.

9. Claims 5, 6, 11, 12, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,078,953 to Vaid in view of US Patent 5,276,677 to Ramamurthy. Vaid ('953) is relied upon for the teachings as discussed above relative to Claims 1-4, 7-10 and 13-15.

However, Vaid does not specifically disclose or describe the monitoring of a content stream comprising monitoring a portion of the content stream on the computer network; and extrapolating how close the entire content stream is to the template from the portion of the content stream, (as required by pending Claims 5, 11 and 16). Vaid also does not specifically disclose or describe the monitoring of a content stream which includes constructing an impact summary for the content stream, (as required by pending Claims 6, 12 and 17).

10. Ramamurthy ('677) discloses a predictive congestion control of high-speed wide area networks comprising extrapolation and summary methods, (Abstract and Col. 11, lines 6-25).

11. To incorporate the traffic control extrapolation and impact summary methods from Ramamurthy into the Vaid quality of service monitoring system would have been obvious to one of ordinary skill in this art at the time of invention by applicant, as noted within Vaid, (Col. 18, lines 46-64). Vaid discloses the use of congestion, utilization and performance degradation reports for purposes of day-to-day troubleshooting and justification and validation of policy

decisions. It would be obvious to conform such reports to include extrapolation and impact summary functionalities, as they would further serve to necessitate evaluation of the affected service.

12. Thus, Claims 5, 6, 11, 12, 16 and 17 are unpatentable over the combined teachings of Vaid in view of Ramamurthy.

13. Finally, newly added Claims 18-20 are also rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,078,953 to Vaid in view of US Patent 5,276,677 to Ramamurthy. Vaid and Ramamurthy are relied upon for those teachings disclosed herein. Moreover, the limitations addressed in Claims 18-20 have already been considered and rejected as they duplicate functionalities enumerated within Applicant's original claim language. Specifically, Claims 18-20 address the enforcement of policies when the impact summary is within the threshold distance of the template. Examiner notes that Claims 1, 7 and 13 address monitoring policy enforcement in relation to threshold distance of the template, and Claim 17 enumerates a monitor with means for capturing an impact summary. In light of the rejection of all claims as noted herein, Examiner further rejects Claims 18-20 as those limitations contained therein have already been addressed and determined to be unpatentable.

Response to Arguments

14. Applicant's arguments filed 23 February 2004, have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the

state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

15. In response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "template defined by vectors") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Moreover, newly amended Claims 1, 7 and 13 are found to be narrowing in light of Applicant's originally rejected claims. Thus, newly amended Claims 1, 7 and 13 are further rejected in their entirety as noted herein above.

16. Regarding Applicant's argument as to Examiner's interpretation of phraseology such as "impact summary" and extrapolation", Examiner reiterates said rejection. Reconsidering the term, "impact summary," the previous rejections were not based on an interpretation of an "impact summary" being based on a set of vectors, since the original claim language did not include this limitation. However, the rejections have been amended to read on a set of vectors (Vaid upon further consideration of Vaid) as noted herein. The new rejections thus now encompass an amendment for "impact summary" to be interpreted in terms of a set of vectors. Regarding the term, "extrapolation," Ramamurthy states, "... from this can be estimated the total controlled traffic that can be expected in frames (n+1) and (n+2)..." (Ramamurthy: Col. 11, lines 22-25). As an "estimation" is being done from frames n and less in order to predict what the expectation of frames (n+1) and (n+2) will be, this in fact reads upon extrapolation. Since the claim language does not explicitly state that extrapolation is to be accomplished via analysis

of the impact summary, the claims may be broadly but reasonably interpreted to read on "extrapolation." Moreover, Examiner reiterates that although claims are to be read in light of the specification, limitations from the specification are not to be read into the claims.

17. Thus, as Examiner has completely addressed Applicant's amendment, and finding Applicant's arguments do not show how Applicant's amendment avoids such references or objections, Examiner hereby maintains the original rejection of all claims, (1-18), in their entirety. Examiner has addressed Applicant's amendment, and has further rejected newly amended Claims 1, 7 and 13 in addition to newly added Claims 18-20, as noted herein above. Regarding dependent Claims 2-6, 8-12 and 14-17, Applicant's remaining claims are further rejected on the same basis also as noted herein above with reference to the original rejection of all claims.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

19. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion


20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (703)-305-0717. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (703)-308-5221. The fax phone number for the organization where this application or proceeding is assigned is (703)-305-3718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-305-6121.

Arrienne M. Lezak
Examiner
Art Unit 2143

AML


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